

REMARKS

In the non-final Office Action, the Examiner rejects claims 1, 3, 6-9, 11-14, 16, 20-22, and 26-30 under 35 U.S.C. § 102(b) as anticipated by BARANOWSKY, II et al. (U.S. Patent No. 5,732,359); rejects claims 2, 19, 23, and 24 under 35 U.S.C. § 103(a) as unpatentable over BARANOWSKY, II et al. in view of MENARD (U.S. Patent Application Publication No. US 2003/0119568); rejects claims 4, 5, 10, and 15 as unpatentable over BARANOWSKY, II et al. in view of GRIFFITH et al. (U.S. Patent No. 6,898,427); rejects claims 17 and 18 under 35 U.S.C. § 103(a) as unpatentable over BARANOWSKY, II et al. in view of GUNNARSSON et al. (U.S. Patent Application Publication No. US 2003/0118015); and rejects claim 25 under 35 U.S.C. § 103(a) as unpatentable over BARANOWSKY, II et al. in view of MENARD, and further view of GRIFFITH et al.

By way of the present amendment, Applicants amend claims 1-6, 10-13, 19, 21-23, and 26 to improve form. No new matter has been added by way of the present amendment. Claims 1-30 remain pending.

Claims 1, 3, 6-9, 11-14, 16, 20-22, and 26-30 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by BARANOWSKY, II et al. Applicants respectfully traverse this rejection in light of the claims, as currently presented.

A proper rejection under 35 U.S.C. § 102 requires that a single reference teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. See M.P.E.P. § 2131. BARANOWSKY, II et

al. does not disclose or suggest the combination of features recited in claims 1, 3, 6-9, 11-14, 16, 20-22, and 26-30.

For example, amended independent claim 1 is directed to a device including a wireless transceiver; and logic to determine whether a first terrestrial network is available for transmitting data, transmit the data to the first terrestrial network using the wireless transceiver when the first terrestrial network is available, determine, when the first terrestrial network is unavailable, whether a second terrestrial network is available, the second terrestrial network being slower than the first terrestrial network, and transmit the data to the second terrestrial network using the wireless transceiver when the second terrestrial network is available. BARANOWSKY, II et al. does not disclose or suggest this combination of features.

For example, BARANOWSKY, II et al. does not disclose or suggest faster and slower terrestrial networks. Instead, BARANOWSKY, II et al. discloses a mobile telephone having the ability to select between a satellite network and a cellular network (see, for example, col. 2, lines 24-28). BARANOWSKY, II et al. in no way discloses or suggests a first terrestrial network and a second terrestrial network, where the second terrestrial network is slower than the first terrestrial network, as currently recited in claim 1. Therefore, BARANOWSKY, II et al. cannot disclose or suggest logic to determine whether a first terrestrial network is available for transmitting data, transmit the data to the first terrestrial network using the wireless transceiver when the first terrestrial network is available, determine, when the first terrestrial network is unavailable, whether a second terrestrial network is available, the second terrestrial network being slower than

the first terrestrial network, and transmit the data to the second terrestrial network using the wireless transceiver when the second terrestrial network is available, as required by amended claim 1.

For at least the foregoing reasons, Applicants submit that claim 1 is not anticipated by BARANOWSKY, II et al.

Claims 3, 6-9, 11, and 12 depend from claim 1. Therefore, these claims are not anticipated by BARANOWSKY, II et al. for at least the reasons given above with respect to claim 1. Moreover, these claims recite additional features not disclosed or suggested by BARANOWSKY, II et al.

For example, amended claim 3 recites that the logic is further configured to determine, when the first terrestrial network is available, whether transmission of the data through the first terrestrial network was successful, and perform the determining whether the second terrestrial network is available when the transmission of the data through the first terrestrial network was unsuccessful. BARANOWSKY, II et al. does not disclose or suggest this combination of features.

For example, BARANOWSKY, II et al. does not disclose or suggest logic to determine, when the first terrestrial network is available, whether transmission of the data through the first network was successful. At the outset, Applicants note that, as set forth above, BARANOWSKY, II et al. does not disclose or suggest a first terrestrial network and a second terrestrial network, where the second terrestrial network is slower than the first terrestrial network. Therefore, BARANOWSKY, II et al. cannot disclose or suggest the above feature of claim 3.

Nevertheless, with respect to the feature, the Examiner alleges "the control processor determines whether or not service is available. If MSAT service is available, data are received and transmitted through the first network" and points to Fig. 4; col. 10, lines 45-46, and col. 13, lines 15-21, of BARANOWSKY, II et al. for support (Office Action, pg. 3). Applicants respectfully submit that the Examiner has misinterpreted the above feature of claim 3.

Claim 3 does not recite determining whether the first network is available. Instead, claim 3 specifically recites that the logic determines, when the first terrestrial network is available, whether transmission of the data through the first network was successful. The Examiner does not point to any section of BARANOWSKY, II et al. for disclosing this feature of claim 3.

Fig. 4 of BARANOWSKY, II et al. merely depicts the determination of whether the MSAT network and the cellular network are available. This figure in no way discloses or suggests determining whether the transmission of data through one of these networks was successful. Therefore, this figure of BARANOWSKY, II et al. cannot disclose or suggest logic to determine, when the first terrestrial network is available, whether transmission of the data through the first network was successful, as required by amended claim 3.

At col. 10, lines 45-46, BARANOWSKY, II et al. discloses that the control processor determines whether the MSAT network is available. This section of BARANOWSKY, II et al. in no way discloses or suggests that the control processor determines whether the transmission of data through the MSAT network is successful.

Therefore, this section of BARANOWSKY, II et al. cannot disclose or suggest logic to determine, when the first terrestrial network is available, whether transmission of the data through the first network was successful, as required by amended claim 3.

At col. 13, lines 15-21, BARANOWSKY, II et al. discloses:

Referring again to FIG. 4, if decision block 63 indicates that MSAT service is available, the re-registration timer is started at function block 90. If necessary, the cellular transmitter is disabled and the voice bus is switched to MSAT if not already in such a configuration. The MSAT phone calls then are made and received as needed as indicated by function block 92.

This section of BARANOWSKY, II et al. discloses determining whether the MSAT service is available. This section of BARANOWSKY, II et al. in no way discloses or suggests that the control processor determines whether the transmission of data through the MSAT network is available. Therefore, this section of BARANOWSKY, II et al. cannot disclose or suggest logic to determine, when the first terrestrial network is available, whether transmission of the data through the first network was successful, as required by amended claim 3.

For at least these additional reasons, Applicants submit that claim 3 is not anticipated by BARANOWSKY, II et al.

Amended independent claims 13, 21, and 22 recite features similar to (yet possibly of different scope than) features described above with respect to claim 1.

Therefore, Applicants submit that claims 13, 21, and 22 are not anticipated by BARANOWSKY, II et al. for at least reasons similar to reasons given above with respect to claim 1.

Claims 14, 16, and 20 depend from claim 13. Therefore, these claims are not anticipated by BARANOWSKY, II et al. for at least the reasons given above with respect to claim 13.

Claims 26-30 depend from claim 22. Therefore, these claims are not anticipated by BARANOWSKY, II et al. for at least the reasons given above with respect to claim 22. Moreover, these claims recite additional features not disclosed or suggested by BARANOWSKY, II et al.

For example, claim 29 recites that the logic performs the selecting a network when data is to be transmitted from the device. The Examiner relies on col. 8, lines 55-59, of BARANOWSKY, II et al. for allegedly disclosing this feature (Office Action, pg. 6). Applicants respectfully disagree with the Examiner's interpretation of BARANOWSKY, II et al.

At col. 8, lines 55-59, BARANOWSKY, II et al. discloses that the mode via which the mobile terminal operates is based on keypad entered information. This section of BARANOWSKY, II et al. in no way discloses or suggests logic that the mobile terminal performs the selecting a network when data is to be transmitted from the mobile terminal, as required by claim 29.

For at least these additional reasons, Applicants submit that claim 29 is not anticipated by BARANOWSKY, II et al.

Claims 2, 19, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of MENARD. Applicants respectfully traverse this rejection.

Claim 2 depends from claim 1. The disclosure of MENARD does not remedy the deficiencies in the disclosure of BARANOWSKY, II et al. set forth above with respect to claim 1. Therefore, claim 2 is patentable over BARANOWSKY, II et al. and MENARD, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1. Moreover, claim 2 is patentable over BARANOWSKY, II et al. and MENARD for reasons of its own.

Claim 2 recites that the first terrestrial network comprises an IEEE 802.11-based network and the second terrestrial network comprises a ReFLEX-based network. The Examiner admits that BARANOWSKY, II et al. does not disclose this feature and relies on MENARD for allegedly disclosing this feature (Office Action, pg. 7). While MENARD does appear to disclose an IEEE 802.11-based network and a ReFLEX-based network, Applicants submit that one skilled in the art at the time of Applicants' invention would not have been motivated to modify the operation of BARANOWSKY, II et al. to include these networks, absent impermissible hindsight.

With respect to motivation, the Examiner alleges "it would have been obvious ... to have a device or method that may access an IEEE 802.11 network and a paging network in order to provide to the device the ability to switch between networks whenever factors, such as available service, signal strength, or types of communications being supported occur" (Office Action, pg. 7). Applicants respectfully disagree.

Applicants submit that the Examiner's motivation falls short of explaining why one skilled in the art at the time of Applicants' invention would have been motivated to change the very operation of the BARANOWSKY, II et al. system, which is directed to

allowing a mobile terminal to select between a satellite network and a cellular network, to further allow the mobile terminal to select between an IEEE 802.11-based network and a ReFLEX-based network. The Examiner's motivation is merely a conclusory statement regarding an alleged benefit of the combination. Such motivation statements are insufficient for establishing a *prima facie* case of obviousness.

For at least these additional reasons, Applicants submit that claim 2 is patentable over BARANOWSKY, II et al. and MENARD, whether taken alone or in any reasonable combination.

Claim 19 depends from claim 13. The disclosure of MENARD does not remedy the deficiencies in the disclosure of BARANOWSKY, II et al. set forth above with respect to claim 13. Therefore, claim 19 is patentable over BARANOWSKY, II et al. and MENARD, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 13. Moreover, claim 19 recites a feature similar to (yet possibly of different scope than) a feature described above with respect to claim 2. Therefore, Applicants submit that claim 19 is further patentable over BARANOWSKY, II et al. and MENARD, whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 2.

Claims 23 and 24 depend from claim 22. The disclosure of MENARD does not remedy the deficiencies in the disclosure of BARANOWSKY, II et al. set forth above with respect to claim 22. Therefore, claims 23 and 24 are patentable over BARANOWSKY, II et al. and MENARD, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 22. Moreover,

these claims are patentable over BARANOWSKY, II et al. and MENARD for reasons of their own.

For example, claim 23 recites a feature similar to (yet possibly of different scope than) a feature described above with respect to claim 2. Therefore, Applicants submit that claim 23 is further patentable over BARANOWSKY, II et al. and MENARD, whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 2.

Claim 24 recites logic configured to select the IEEE 802.11-based network to transmit data over the ReFLEX-based network when both networks are available. The Examiner relies on col. 8, lines 61-63, of BARANOWSKY, II et al. for allegedly disclosing this feature.

At the outset, Applicants note that the Examiner admits that BARANOWSKY, II et al. does not disclose an IEEE 802.11-based network or a ReFLEX-based network (Office Action, pg. 7). Therefore, it is unclear how the Examiner can reasonably allege that BARANOWSKY, II et al. discloses the above feature of claim 24.

At col. 8, lines 61-63, BARANOWSKY, II et al. discloses that the control processor includes a mode that provides priority to the MSAT network. This section of BARANOWSKY, II et al. in no way discloses or suggests logic configured to select the IEEE 802.11-based network to transmit data over the ReFLEX-based network when both networks are available, as required by claim 24.

For at least these additional reasons, Applicants submit that claim 24 is patentable over BARANOWSKY, II et al. and MENARD, whether taken alone or in any reasonable combination.

Claims 4, 5, 10, and 15 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of GRIFFITH et al. Applicants respectfully traverse this rejection.

Claims 4, 5, and 10 depend from claim 1. The disclosure of GRIFFITH et al. does not remedy the deficiencies in the disclosure of BARANOWSKY, II et al. set forth above with respect to claim 1. Therefore, Applicants submit that claims 4, 5, and 10 are patentable over BARANOWSKY, II et al. and GRIFFITH et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1.

Claim 15 depends from claim 13. The disclosure of GRIFFITH et al. does not remedy the deficiencies in the disclosure of BARANOWSKY, II et al. set forth above with respect to claim 13. Therefore, Applicants submit that claim 15 is patentable over BARANOWSKY, II et al. and GRIFFITH et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 13.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of GUNNARSSON et al. Applicants respectfully traverse this rejection.

Claims 17 and 18 depend from claim 16. The disclosure of GUNNARSSON et al. does not remedy the deficiencies in the disclosure of BARANOWSKY, II et al. set

forth above with respect to claim 16. Therefore, Applicants submit that claims 17 and 18 are patentable over BARANOWSKY, II et al. and GUNNARSSON et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 16.

Claim 25 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of MENARD, and further in view of GRIFFITH et al. Applicants respectfully traverse this rejection.

Claim 25 depends from claim 23. The disclosure of GRIFFITH et al. does not remedy the deficiencies in the disclosures of BARANOWSKY, II et al. and MENARD set forth above with respect to claim 23. Therefore, Applicants submit that claim 25 is patentable over BARANOWSKY, II et al., MENARD, and GRIFFITH et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 23.

In view of the foregoing amendments and remarks, Applicants respectfully request the Examiner's reconsideration of this application, and the timely allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

Respectfully submitted,

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